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16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE EASTERN DISTRICT OF WASHINGTON**

18 KETTLE RANGE CONSERVATION  
19 GROUP, a nonprofit organization,

20 *Plaintiff,*

21 v.

22 JOSHUA WHITE, in his official capacity  
23 as Forest Supervisor, Colville National  
24 Forest; *et al.*,

25 *Defendants.*

Civil No. 2:23-cv-00147-SAB

JOINT MOTION TO STAY  
PROCEEDINGS AND VACATE  
THE OCTOBER 16, 2023  
SCHEDULING CONFERENCE

October 31, 2023  
Without Oral Argument

1 The Parties jointly move to stay all proceedings in this matter and vacate the  
2 October 16, 2023 Scheduling Conference. In support of this motion, the Parties  
3 state as follows:  
4

- 5 1. This action challenges the Bulldog Project on the Three Rivers Ranger  
6 District on the Colville National Forest in eastern Washington. The United  
7 States Forest Service (“USFS”) analyzed the Bulldog Project in an  
8 Environmental Assessment and prepared a Biological Assessment for the  
9 Project. The United States Fish and Wildlife Service (“FWS”) concurred  
10 with the Forest Service’s “may affect, not likely to adversely affect”  
11 finding for lynx. USFS approved the Bulldog Project in a Decision Notice  
12 and Finding of No Significant Impact issued on April 28, 2022.  
13
- 14 2. Plaintiff initiated this action on May 12, 2023. ECF No. 1. Plaintiff  
15 amended its Complaint on August 23 and Defendants answered on  
16 September 13. ECF Nos. 19, 20.  
17
- 18 3. In response to this Court’s recent decision and order in *Kettle Range*  
19 *Conservation Group v. U.S. Forest Service, et al.*, Case No. 2:21-cv-161-  
20 SAB, ECF No. 74, USFS has decided to conduct additional analysis under  
21 the National Environmental Policy Act (“NEPA”) and prepare a  
22 supplemental Environmental Analysis for the Bulldog Project. USFS  
23  
24  
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currently anticipates the following timeline for completion of the supplemental Environmental Analysis:

- a. Mid-October 2023: Publish a supplemental draft Environmental Assessment and offer a 30-day scoping and public comment period consistent with 36 C.F.R. § 218.25(a)(i) and 40 C.F.R. § 1500.
  - b. Mid-November 2023: Conclude scoping and 30-day comment period.
  - c. January 2024: If the agency concludes an Environmental Impact Statement is not required, publish the supplemental final Environmental Assessment and draft Finding of No Significant Impact/Decision Notice, starting the 45-day objection period (36 C.F.R. § 218.26(a)).
  - d. April 2024: Issue a Supplemental Final Decision Notice and Finding of No Significant Effect (FONSI) after responding in writing to all pending objections (36 C.F.R. § 218.12(a)).
4. On May 9, 2023, after additional conversations with FWS, USFS reinitiated consultation under Section 7 of the Endangered Species Act (“ESA”) on the Bulldog Project for effects to Canada lynx and grizzly bear to again consider the effects of the Bulldog Mountain fire that burned in the project area in 2021. This consultation is still ongoing, and the Forest is updating the Biological Assessment to incorporate and be consistent with

1 the information in the supplemental Environmental Assessment. USFS  
2 anticipates that consultation will be completed before the Forest issues a  
3 Supplemental Final Decision Notice and FONSI. Defendants agree to  
4 provide Plaintiff with final copies of the consultation documents within 5  
5 business days after they are finalized or by March 1, 2024, whichever is  
6 later.  
7

- 8
- 9 5. No Project implementation activities will occur until the supplemental  
10 Environmental Analysis and consultation with FWS are completed. After  
11 the supplemental Environmental Analysis and consultation with FWS are  
12 completed, USFS agrees to provide Plaintiff with at least 30-days' notice  
13 before any ground-disturbing activity authorized by the Project begins.  
14
- 15 6. Plaintiff reserves the right to amend its Complaint after reviewing the  
16 supplemental NEPA and new consultation documents. Defendants do not  
17 oppose Plaintiff submitting a Second Amended Complaint. The Parties  
18 further agree that Defendants' Answer to the First Amended Complaint  
19 (ECF No. 20) should be deemed the responsive pleading to Plaintiff's  
20 Second Amended Complaint, if one is filed.  
21
- 22 7. In light of the foregoing, the Parties jointly move the Court for a stay of  
23 proceedings. A district court has the inherent power to stay its proceedings.  
24 This power to stay is "incidental to the power inherent in every court to  
25  
26  
27

1 control the disposition of the causes on its docket with economy of time  
2 and effort for itself, for counsel, and for litigants.” *Landis v. North*  
3 *American Co.*, 299 U.S. 248, 254 (1936); *see also Yong v. INS*, 208 F.3d  
4 1116, 1119 (9th Cir. 2000) (a court has authority to grant a stay pursuant to  
5 its “inherent authority to control its own docket and calendar.”); *Leyva v.*  
6 *Certified Grocers of Cal. Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)  
7 (noting court may grant a stay “pending resolution of independent  
8 proceedings which bear upon the case” when “it appears likely the other  
9 proceedings will be concluded within a reasonable time.”).

- 10  
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12  
13 8. When evaluating a motion to stay, the court weighs the (1) potential  
14 prejudice to the non-moving party; (2) hardship and inequity to the moving  
15 party if the action is not stayed; and (3) judicial resources that would be  
16 saved by granting the requested stay. *Landis*, 299 U.S. at 248; *Lockyer v.*  
17 *Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005); *CMAX, Inc. v. Hall*,  
18 300 F.2d 265, 268 (9th Cir. 1962).

- 19  
20  
21 9. All three *Landis* factors favor granting the stay:

- 22 a. There is no potential prejudice because the Parties jointly move to  
23 stay proceedings and no Project implementation activities will occur  
24 until the supplemental Environmental Analysis and consultation with  
25 FWS are completed.  
26  
27

1 b. The possibility of hardship and inequity also favor granting a stay.  
2 Defendants' limited resources are directed towards preparing the  
3 supplemental Environmental Assessment and reinitiating consultation.  
4 The agencies' administrative records are not yet final because  
5 supplemental NEPA analysis and reinitiated consultation are  
6 underway. Plaintiff's First Amended Complaint challenges agency  
7 actions that will soon be superseded. The Parties wish to conserve  
8 their time and resources and not pursue litigation at this time.  
9

10 c. Judicial economy also favors granting a stay. The Court has not  
11 entered a scheduling order and there are no other pending motions.  
12 Judicial resources will be conserved if they are directed towards the  
13 allegations in Plaintiff's Second Amended Complaint (if any) that  
14 challenges the supplemental NEPA analysis and ESA consultation  
15 that are anticipated by next spring. Allowing this litigation to proceed  
16 now would be largely an academic exercise as the legal landscape  
17 (*i.e.*, the operative decision documents and the administrative records  
18 underlying those decisions) will soon be changing.  
19

20 10. The requested stay is not indefinite. USFS currently anticipates completing  
21 reinitiated consultation and issuing a Supplemental Final Decision Notice  
22 and FONSI sometime in April 2024. By May 24, 2024, the Parties propose  
23

1 to file a joint status report. The status report will update the court on the  
2 status of the supplemental NEPA analysis and ESA consultation and, if  
3 appropriate, include a proposed schedule with deadlines to resolve the  
4 remaining issues in this case. No ground-disturbing activity authorized by  
5 the Project will occur before May 31, 2024.  
6

- 7 11. Because the Parties seek to stay this litigation, they also move the Court to  
8 vacate the scheduling conference currently set for October 16 and the  
9 deadlines contained in the scheduling conference notice. ECF No. 21.  
10  
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13 For all these reasons, the Court should stay further proceedings in this action  
14 and vacate the October 16 scheduling conference. A proposed order is attached to  
15 this motion and will be emailed to chambers.  
16  
17

18 Dated: September 29, 2023  
19  
20

21 *For Plaintiff*

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